



Home Office

Asylum Policy Instruction

Dependants and former dependants

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Section 1: Introduction

1.1 Purpose of instruction

This guidance explains how caseworkers should process and consider asylum claims where a principal applicant has one or more family members who are either dependant on the claim or claiming asylum separately in their own right or both. It also provides guidance on handling asylum claims from former dependants who make a claim in their own right, with or without the former principal applicant as a dependant on the new claim.

The instruction provides specific guidance on:

- ▶ the categories of persons who may be accepted as dependant on an asylum claim and the consequences of a grant or refusal of leave;
- ▶ considering claims involving dependants or separate claims from family members;
- ▶ how asylum claims by those previously accepted as dependants should be considered;
- ▶ how applications to remain by UK-born children of asylum claimants or those granted asylum, Humanitarian Protection (HP), Family or Private Life Leave to remain (LTR) or Discretionary Leave (DL) should be considered.

This instruction must be read in conjunction with the asylum policy instructions, '[Considering the asylum claim and assessing credibility](#)', '[Further Submissions](#)', '[Gender issues in the asylum claim](#)', '[Humanitarian Protection](#)', '[Discretionary Leave](#)', '[Processing family cases](#)' and '[IDI Chapter 24 – Disclosure of information](#)'.

1.2 Background

Asylum claims may include one or more family members who are accepted as dependant on the principal applicants' claim. It is important to fully consider all the evidence available, including that provided by dependants or other family members who have made claims in their own right, and to recognise protection issues which may arise in the family context when considering such claims. It is therefore important to link Home Office files relating to the same family to ensure all relevant evidence is considered.

1.3 Policy Intention in cases involving dependants

The policy objective when considering all asylum claims involving dependants or former dependants who claim in their own right is to:

- ▶ ensure asylum claims are properly considered in a timely and sensitive manner on an individual, objective and impartial basis;
- ▶ ensure protection needs are identified and all relevant evidence provided by the principal applicant and any dependants is properly considered and given appropriate weight in the decision making process.
- ▶ minimise spurious applications by ensuring that claims from former dependants submitted only after the principal applicant has been refused are dealt with quickly and certified where appropriate.

1.4 Application in Respect of Children

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the Home Office to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. Where an asylum claim involves dependant children caseworkers must consider protection needs and the best interests of each child as an individual and in the context of the family unit.

In most cases the principal applicant will normally be able to set out any protection needs on behalf of their children to avoid putting children through an interview process unnecessarily. However, it is important not to lose sight of the child as an individual, as well as part of the family, to be vigilant and responsive to their protection and welfare needs and consider how this could impact on the needs of the family as a whole. Caseworkers have discretion to interview dependant children where appropriate. See [section 5.1](#) below.

Where there are child welfare or protection concerns that may involve safeguarding issues within the family unit the case must be referred immediately to the Vulnerable Minors Team, the relevant local authority and the Office of the Children's Champion. In an emergency the case should be referred to the police.

For further information on the key principles to take into account, see: [Section 55 Children's Duty Guidance](#). See also '[Processing asylum applications from children](#)' guidance.

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Section 2: Relevant Legislation

2.1 The Immigration Rules

[Paragraph 349](#) of the Immigration Rules sets out who may be considered as dependants of the principal applicant in an asylum claim. A spouse, civil partner, unmarried or same-sex partner, or minor child who is accompanying the principal applicant and does not wish to claim asylum in their own right will normally be treated as a dependant provided, in the case of an adult dependant with legal capacity, they consent to be treated as such at the time the application is lodged.

Family members are entitled to make an asylum claim in their own right regardless of whether they consent to being treated as a dependant of the principle applicant. A family member can simultaneously remain dependent on another person's claim whilst also making a claim in their own right. If an independent claim is made this must be considered individually in accordance with [paragraphs 328 to 333B](#) of the Immigration Rules.

[Paragraphs 352A to 352FJ](#) in Part 11 of the Immigration Rules set out requirements for family reunion for those who are seeking leave to enter or remain as the family member of someone granted asylum or humanitarian protection.

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Section 3: Applications to be considered as a dependant

3.1 Definition

Dependants will normally be identified at the screening stage of the initial claim, or on occasion, at the substantive asylum interview. Caseworkers must be satisfied that an individual applying to be treated as a dependant of the principal applicant:

- ▶ is related as claimed to the principal applicant and the relationship falls within the categories set out in [paragraph 349](#);
- ▶ in the case of an adult dependant with legal capacity consents to being treated as such at the time the application is lodged (consent will normally be gained during the screening process);
- ▶ if claiming to be a child is under 18 years of age or, in the absence of documentary evidence establishing age, appears to be under that age;
- ▶ if claiming to be an unmarried or same sex partner is a person who has been living together with the principal applicant in a subsisting relationship akin to marriage or a civil partnership for two years or more.

Relatives who accompanied the principal applicant to the UK who are **not** the partner or minor child, for instance a dependant parent or other relative, must not be accepted as dependants and should claim asylum in their own right if they claim to have protection needs. In cases where the age of a dependant is disputed, they should be treated as dependant on the principal applicants claim until the age dispute is resolved.

3.2 Traditional or customary marriage

If the principal applicant claims that their dependant is a partner as a result of a traditional or customary marriage, the dependant should be treated as an unmarried partner providing they meet the criteria set out above.

3.3 Polygamous and Polyandrous marriages

It is Government policy to prevent the formation of polygamous and polyandrous marriages in the UK. Only the first spouse can be included as a dependant in accordance with Section 2 of the [Immigration Act 1988](#) and [paragraphs 278-279](#) of the Immigration Rules. Any other spouses should claim asylum in their own right if they have protection needs. The files should be linked for consideration purposes. See [IDI chapter 8 Section FM 1.4](#) for further details.

3.4 Dependants claiming in their own right

Dependants are entitled to claim asylum in their own right and all adults should be asked separately and confidentially, away from their partner, if they wish to apply for asylum in their

own right during the screening process. A dependant is not required to withdraw their claim as a dependant if they make a claim in their own right.

Caseworkers must check the Home Office file to ensure that full details have been obtained of any dependants, including name, age, nationality, and relationship to the principal applicant. Any relevant documents that can be provided must be retained and recorded. If this has not been completed at screening, this must be done at the substantive interview.

Adult dependants must be screened and all applicants must be fingerprinted, method of entry to the UK established and if appropriate, served with the relevant immigration notices. Caseworkers should arrange for this to be completed if it is not clear from the Home Office file that this has been completed. Also see '[Section 6](#)' below on handling the case when dependants make their own claim.

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3.5 Requests to be added to the claim before an initial decision

There may be cases where dependants are identified during the substantive asylum interview for the principal applicant. Spouses, civil partners, unmarried or same-sex partners and minor children may be included as dependant on the principal applicants asylum claim **before** an initial decision is made providing they meet the requirements set out in [Paragraph 349](#).

3.6 Requests to be added to the claim after an initial decision

Spouses, civil partners, unmarried or same-sex partners and minor children should not be accepted as dependants following a decision to grant any form of leave on the principal applicant's asylum claim. See [section 3.10 - Applications for leave in line following a decision](#) and [section 3.8](#) for guidance on dependants not included in the original claim but included in further submissions.

3.7 Children who reach the age of 18 before an initial decision

A minor child included as a dependant in the original claim who reaches the age of 18 before an initial decision on the principal applicant's claim should normally continue to be treated as a dependant for the purposes of the claim. See [Section 3.8](#) below for guidance on dealing with further submissions.

Although dependants who are over 18 can continue to be treated as dependants for the purpose of considering the initial asylum claim, they cannot continue to be treated as a dependant for removal purposes. It may be that they are offenders in their own right e.g. overstayers or illegal entrants and consideration should be given to serving an IS151A accordingly. See Chapter 50 of the [Enforcement Instructions and Guidance](#) for further details.

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3.8 Dependants included in further submissions

Any dependant, who is currently under 18 **and** was included in the original asylum or human rights claim, should continue to be treated as a dependant until any further submissions are concluded.

Any dependant included in the original asylum or human rights claim, who reaches 18 before the further submissions are decided, should normally continue to be treated as a dependant for the purposes of the further submissions application. See [section 3.7](#) above for details on serving immigration paperwork to dependants over 18.

Dependants who were not included in the original claim and do not meet the requirements of [paragraph 349](#) of the immigration rules must not be included as a dependant on any further submissions application. The principal applicant should be informed that they will not be considered as dependant and should make an application under the appropriate immigration rules. Caseworkers must still consider any relevant family issues as part of the overall consideration of the further submissions.

Where the initial decision is a refusal, any UK born dependants should normally be included as part of any further submissions application.

If a dependant has leave in another capacity they should apply for any further leave under the appropriate immigration rules and should not be included as a dependant in any further submissions application.

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3.9 Applicant left the UK and returned with dependants not included in the original claim

There may be instances where an individual returns to the UK, following previous removal action or voluntary departure, with dependants who were not included in the original asylum claim. In these cases, providing they meet the requirements in [Paragraph 349](#) they should be accepted as dependants on any subsequent further submissions claim.

Appropriate checks to establish identity and the dependants' relationship to the principal applicant must be undertaken. There must be credible evidence of the relationship between a parent and any children not previously included. Where there are child protection concerns the case **must** be referred immediately to the Vulnerable Minors Team. See instruction on '[Further Submissions](#)' for further details on processing the claim.

3.10 Applications for leave in line following a decision

Pre-Flight spouses, partners and children of refugees and beneficiaries of HP

Spouses, civil partners, same sex partners and children who formed part of the family unit of the person granted asylum or HP at the time that the person granted asylum or HP left the country of their habitual residence to seek asylum must be considered in accordance with [Paragraphs 352A to 352FJ](#) of the Immigration Rules under the Family Reunion policy if they were not included as dependants before a decision on the principal applicants claim. It is

permissible to make either an in country or out of country application for Family Reunion. See asylum instruction, '[Family Reunion](#)'.

Any leave granted to family members joining a refugee or beneficiary of HP should generally be in line with that of the refugee. See [Family Reunion](#) instruction for guidance on granting leave and issuing relevant supporting documents.

The family reunion provisions do **not** extend to applicants refused asylum and subsequently granted discretionary leave or leave to remain on the basis of family or private life in the UK. Applicants will need to make an application under the relevant Immigration Rules or outside the rules on a discretionary basis for other reasons not covered by the immigration rules and should be referred to the [Home Office website](#) for the current application process and appropriate form.

Post flight spouses or partners

Spouses, civil partners and same sex partners not part of the family unit of a person granted asylum or HP before that person left their country of former habitual residence must not be added as dependants. They can apply to join a refugee or beneficiary of HP under the Immigration Rules. See [IDI Chapter 8](#) for guidance. Applicants should be referred to the [Home Office website](#) for the correct application process and forms.

Post Flight children

Children born in the UK after a person is granted asylum or HP should be granted leave in line with the principal applicant although refugee status or HP should not normally be granted as there will have been no individual consideration of the child's case. See [section 8: Children born in the UK](#) for further guidance.

3.11 Dependants identified as part of criminality checks

Where security checks identify a dependant who is known to Criminal Casework or the offence is one that falls within the Criminal Casework referral criteria, the case must be referred to Criminal casework.

3.12 EEA dependants and non-EEA dependants of EEA nationals

Any case involving an EEA national family member should be discussed with a Senior Caseworker in the first instance as the case may need to be referred to another team to consider. For guidance on dealing with Non EEA national family members of European Economic Area (EEA) nationals see [European Policy Instructions](#).

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Section 4: Granting or refusing leave in line

4.1 Granting leave to dependants

Dependants of an asylum applicant who have been included in the initial asylum claim will, if the principal applicant is granted Asylum, HP, Family or Private Life leave to remain (LTR) or Discretionary Leave, normally be granted leave of the same duration and status as the principal applicant.

[Paragraph 349](#) of the Immigration Rules states that if the principal applicant is granted asylum or HP and leave to enter or remain (LTE/R), any qualifying dependants will also be granted for the same duration. This applies whether the dependants arrived in the UK with the principal applicant or followed at a later date but were included in the application **before** the decision was made.

Although it may not be appropriate to recognise some dependants as refugees, for example if they specifically request not to be treated as a refugee or they are a different nationality to the principal applicant, they should still be granted LTE/R for the same duration as the principal applicant.

Where the principal applicant has been granted leave under the [Restricted Leave](#) policy, any dependants should normally be granted leave of the same duration and conditions as the individual granted restricted leave. However, caseworkers must have regard to the need to safeguard and promote the welfare of children in the UK under section 55 so must consider the likely impact that imposing such conditions may have on dependant children and consider what is appropriate in the particular circumstances of the individual case. See [section 1.4](#) for application of this instruction to children and the '[Restricted Leave](#)' guidance.

4.2 Refusing leave to dependants

Applications for LTE/R as a dependant will not be granted if the applicant does not qualify as a dependant under [paragraph 349](#). The applicant must be notified, with reasons, why they do not qualify to be treated as a dependant and what this means for their immigration status.

If the principal applicant is refused LTE/R, any dependants on that claim will not normally qualify for LTE/R and should normally also be refused in line, unless they have individual protection needs or section 55 consideration leads to a grant of leave.

If the principal applicant is refused LTR and is to be deported, deportation action may be taken against any UK born children under section 3(5)(b) of the [Immigration Act 1971](#). Similarly, if the principal applicant is subject to administrative removal under section 10 of the [Immigration and Asylum Act 1999](#), removal directions may be served on the UK born children under section 10(1)(c) of the 1999 Act.

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Section 5: Evidence from dependants

Caseworkers must ensure that all available evidence in asylum claims is fully considered, including evidence provided by dependants and other family members. It will normally be appropriate to link relevant files to consider claims from family members together, even where separate claims have been lodged, to ensure all relevant factors have been considered, including an evaluation of protection needs in the family context, and to ensure consistency in decision-making.

Relevant issues affecting dependants which may give rise to individual protection needs can come to light at any point in the asylum process but are most likely to be identified through evidence provided during a dependant adult's screening interview, written evidence submitted in a 'one stop' section 120 notice or by the principal applicant. It may also be important to gather additional information on key aspects of the claim from dependants where this is necessary to fully consider the claim.

Caseworkers should be alert to expressions of a need for protection from dependants that suggest they may have a claim in their own right, independently of the principal applicant. Where evidence comes to light suggesting a dependant who has not claimed in their own right has individual and specific protection needs it may be necessary to interview them if such issues cannot be properly considered without further specific evidence from that individual.

5.1 Gathering additional evidence from dependants

In the majority of cases, the principal applicant should be able to provide details of the asylum claim for the whole family unit. It will not normally be necessary to interview dependants where the principal applicant is able to convey individual and collective protection needs on their dependants behalf. However, caseworkers must be aware that dependants may raise issues independent of the principal applicant which may give rise to a protection claim in their own right. They may also be able to provide relevant details that are material to the principal applicants claim which would not otherwise be available. For example, a spouse or partner may be better placed than the principal applicant to provide details of their individual political activities, religious practices, relevant family history or incidents of past persecution, and it may be appropriate to request a written statement from the dependant or interview them if the issue is material to the claim.

Caseworkers must gather and assess all relevant information to fully consider the protection needs of the family unit which may involve interviewing one or more dependants. Where necessary and bearing in mind the need to consider the best interests of the child to avoid putting children through an interview unnecessarily, where the child is of an appropriate age, caseworkers should consider whether hearing from the child is necessary. Where children are interviewed, this must be conducted in accordance with the ['Processing applications from children'](#) guidance.

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5.2 Considering evidence provided by dependants

Caseworkers must ensure that they gather and assess any relevant evidence relating to protection needs in the family context to ensure the asylum claim is fully considered. This includes considering:

- ▶ any evidence provided by dependants, including evidence provided at the screening interview, completed section 120 (one stop) notices and statements of additional grounds;
- ▶ any Home Office files relating to previous applications by the applicant or any relatives (including, for example, previous student applications);
- ▶ Country of origin information specifically relevant to family members;

It is important to fully consider any evidence provided by dependants because the existence and experiences of family members can give rise to protection needs for the family as a whole or impact on consideration of internal relocation, for example. However, it is essential that any evidence provided by any person other than the principal applicant is handled with due regard to confidentiality and the potential impact on the family unit.

It will not normally be appropriate to directly present evidence provided by one family member to another family member (see [Section 5.3](#) below). Instead, apparently contradictory evidence should be used to explore the relevant aspects of the claim in more depth if the issue is material to the claim. It is not appropriate to confront individuals with evidence from family members in an adversarial manner as this is likely to prevent applicants from disclosing relevant evidence and may, in extreme cases, put family members at risk of harm.

Apparent contradictions must be carefully addressed as part of the overall evaluation of the claim and given appropriate weight, bearing in mind that dependants, particularly children, may not be fully aware of the reasons why their family left in the first place and sought asylum in the UK or have complete knowledge or understanding of the facts relevant to the principal applicants' claim. Caseworkers must carefully consider the impact on the family unit of contradictory statements, bearing in mind the potential damage this may cause. In particular, where statements or previous evidence is withdrawn by the principal applicant or a dependant, caseworkers must carefully consider the reasons for this in the family context.

See '[Considering the asylum claim and assessing credibility](#)' instruction for further details.

5.3 Disclosure and confidentiality

There may be cases where it is considered appropriate and necessary to disclose evidence provided by one family member to another if this is the only way to properly investigate a material aspect of the claim that cannot otherwise be explored through methods that do not require such disclosure. It may also be considered appropriate and necessary to refer to evidence from dependants or other family members in the decision. Before doing so caseworkers must have due regard to confidentiality, data protection requirements and any evidence of individual protection needs relating to family members.

Under the terms of the [Data Protection Act](#) it is important to obtain informed consent from all members of the family providing evidence as part of the claim before directly referring to such

evidence during an interview or in any decision to refuse the claim. An applicant may have legitimate reasons why they do not give consent, such as a fear of violence from their partner, so careful consideration needs to be given to the evidence before citing failure to give consent as a credibility issue.

See [Chapter 24 \(Disclosure and Confidentiality\) in the Immigration Directorate Instructions](#) for further details.

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Section 6: Dependants claiming in their own right

6.1 Introduction

[Paragraph 349](#) of the Immigration Rules states that family members dependant on the principal applicants asylum claim, may claim asylum in their own right and their applications will be considered individually irrespective of the outcome of the principal applicants claim. Family members may lodge their own asylum claim at any time during their stay in the UK. They can claim:

- ▶ In their own right and choose not to remain dependant on the principal applicants claim;
- ▶ In their own right and remain as a dependant on the principal applicants claim;
- ▶ After the principal applicant's asylum claim has been refused, apply as the principal applicant with the former principal applicant as their dependant.
- ▶ As the principal applicant, after the principal applicant has been refused, without the principal applicant as a dependant

6.1.1 Family members claiming in their own right who do not remain dependant on the principal applicants claim.

Even though the individual was previously treated as a dependant, they should be treated as a principal applicant for the purposes of the decision. This includes for example, issuing a Reasons for Refusal letter and associated rights of appeal where this applies.

6.1.2 Simultaneous claims as a dependant and principal applicant.

The person should be served the relevant paperwork as both a dependant and a principal applicant. Caseworkers must ensure that the case files of family members are linked.

6.1.3 Principal applicant is refused; dependant applies as the principal applicant with former principal applicant as their dependant.

The former principal applicant must be served with decision paperwork as a dependant. The former dependant must be served decision paperwork as a principal applicant.

6.1.4 Principal applicant is refused: dependant applies as principal applicant without the former principal applicant as a dependant.

The former dependant should be served paperwork as a principal applicant. Caseworkers must ensure that in cases where a former dependant applies in their own right and does not maintain any link with the former principal applicant, that these cases are handled sensitively. This is particularly important if the relationship between the family members has broken down.

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6.2 The One Stop Notice (section 120 of the NIA Act 2002)

All dependants should have been served with a one stop notice under section 120 of the [Nationality, Immigration and Asylum Act 2002](#). The aim of the one-stop procedure is to encourage applicants to provide all their reasons for wanting to enter or remain in the UK as early as possible to allow full consideration of applications, taking into account all relevant evidence. Late applications made by former dependants must be considered but, where the application relies on a matter which could or should have been raised earlier and where there is no satisfactory reason provided or identified for it not having been raised earlier, we can consider certification of the claim. See [section 7.5](#): Consideration of certificates below.

6.3 Asylum claims made by previous dependants at the ASU

Where a claim for asylum is made in the Asylum Screening Unit (ASU) by a person previously registered as a dependant on another claim, file tracking and CID must be checked to see where the file is located and being handled.

Applicants are not usually required to undergo normal screening procedures because they have already been screened as a dependant on the previous claim. However, if the applicant has not been fully screened (i.e. typically where the applicant was a minor when their parent claimed asylum) the ASU must complete a full screening interview and actions not previously taken when the applicant was a dependant must be scheduled.

The screening officer must contact the caseworker responsible for the principal applicant's claim by phone and note CID that a dependant of the principal applicant has claimed asylum in their own right. If removal directions have been set see [section 6.5](#) below.

ASU staff will also retain old Application Registration Cards (ARC) and issue new cards to the applicant and any dependants on their claim. If a previous dependant wishes to make their own claim and add dependants to that claim, the dependants must be present at the screening location. If they are not present they cannot be added to the claim and will need to return to the screening location with the dependants they wish to add.

Once screening actions have been completed, normal procedures should follow. This means cases should be considered for Detained Fast Track (DFT), Detained Non-Suspensive Appeals (DNSA) according to the instruction, '[Detained Fast Track Processes](#)', and routed as usual.

Where a former dependant states that they do not want the principal applicant to know about their separate asylum claim, this **must** be respected. Caseworkers must ensure the confidentiality of the dependants claim in such circumstances and update Home Office records accordingly.

Postal applications must be rejected and dealt with in accordance with the Asylum Instruction, '[Postal claims](#)'.

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6.4 Applicant advises that a dependant wishes to claim asylum

If advised by the principal applicant that one or more of their dependant(s) wishes to claim asylum in their own right, caseworkers must inform the applicant that their dependant will need to attend ASU for their claim to be registered unless removal directions have already been set for the principal applicant and any dependants on the claim.

6.5 Claims by dependants where removal directions have been set

When an applicant is identified as having had a decision and where removal directions have been set, the claim should still be accepted:

- ▶ **Claims made to the caseworker handling the principal application:** If removal is not imminent and a previous dependant claims asylum following the setting of removal directions it will be at the caseworker's discretion to determine whether they have sufficient evidence to consider the claim and whether it is deemed necessary for the applicant to attend ASU and be interviewed.
- ▶ **Claims made to the ASU:** If removal is not imminent the ASU should contact the caseworker and in conjunction with the National Asylum Intake Unit (NAIU) decide how the claim should be taken forward. It may be, for example, that although initially dependent on the principal applicant, the new applicant is no longer dependent and the family can be split.

If removal is imminent the officer dealing with the claim must immediately contact Operational Support and Certification Unit (OSCU) to inform them that the dependant has claimed asylum in their own right. The case notes of the principal applicant on which they were a dependant must be updated to record that the dependant has made their own asylum claim. OSCU will advise on next steps.

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7. Deciding claims by former dependants

7.1 Cases being handled by the Asylum Casework Directorate (ACD)

Where former dependants claim in their own right the case should be routed to the asylum team who had conduct of the principal applicant where this is possible. If an interview is required this should be arranged and conducted in accordance with existing guidance. See Asylum Instruction '[Conducting the Asylum Interview](#)'.

Caseworkers must raise any barriers to removal on the relevant databases for the dependants of the applicant. This should make it clear that there is an outstanding claim from a former dependant which, until considered, prevents removal.

All Home Office files relating to the principal applicant and all dependants must be obtained and linked before considering the case. This is important to ensure all relevant evidence is properly considered in the family context and to ensure decisions made are consistent, whilst ensuring that any confidentiality issues in relation to the claims are taken into account. When a decision has been made, caseworkers must refer to the Asylum Instruction, '[Implementing Substantive Decisions](#)'.

7.2 Claims from children

Asylum claims from children who were previously dependent on another application must be considered by caseworkers trained to handle claims from children. See the Asylum Instruction, '[Processing Asylum Applications from Children](#)' for further guidance. Officers must not apply the actions set out in this instruction either to children or to those with children without having due regard to Section 55.

7.3 Considering the Claim

Asylum claims made by former dependants should be considered on their own merits, in the same way as other asylum claims. Whilst delay in claiming asylum in their own right will be a factor that should be addressed, caseworkers must provide an opportunity for the applicant to explain and any reasons given for failure to disclose information earlier must be given careful consideration. It is not appropriate to reject the claim on the basis of the delay in claiming alone and caseworkers must consider any new material, including any reasons for the delay, in the round and in the context of all the evidence available. See the asylum instructions '[Considering the asylum claim and assessing credibility](#)' and '[Gender issues in the Asylum Claim](#)' for further guidance.

Where it is considered appropriate to refer to evidence from other dependants or family members in the decision caseworkers must carefully consider any confidentiality issues that may arise. See [section 5.3: Disclosure and Confidentiality](#) above.

If the claim falls to be refused consideration should be given to whether certification is appropriate (see [Consideration of certification under section 96 of the 2002 Act](#) and [Case by case certification under section 94 of the 2002 Act](#) below).

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7.4 Certification under Section 96 of the 2002 Act

Section 96 of the [Nationality, Immigration and Asylum Act 2002](#) (as amended) allows the Home Office to certify a right of appeal in certain circumstances. This means that an appeal may not be brought either in-country or out-of-country. This decision can be challenged by judicial review.

If the dependant claiming asylum in their own right has previously been served with a section 120 one-stop notice as a dependant (or on another basis) and failed to raise asylum or human rights issues in the Statement of Additional Grounds, certification under Section 96 may be appropriate if the present claim now falls for refusal.

Section 96 is intended to prevent people raising matters at the last minute to frustrate removal. For example, it would usually be appropriate to certify where one spouse has an asylum claim refused and the other claims on the same grounds. However, a certificate should not be issued unless and until the application by the former dependant has been carefully considered. See the [Appeals Guidance](#) for further details

7.5 Certification under section 94 of the 2002 Act

If no section 96 certificate is issued, caseworkers must consider whether case by case certification or designated state certification under section 94 may be appropriate. A decision to certify a case on any basis under section 94 must only be made by a fully NSA accredited caseworker. See the Asylum Instruction '[Certification under section 94 of the NIA Act 2002](#)' for further guidance.

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8. Children born in the UK

Section 55 of the Borders, Citizenship and Immigration Act 2009 (section 55) requires the Home Office to carry out its functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. Caseworkers must not apply the actions set out in this guidance either to children or to those with children without having due regard to section 55. The instruction 'Every Child Matters - Change for Children' sets out the key principles to take into account.

The statutory duty to children includes the need to make decisions affecting children in a timely and sensitive way. In accordance with the UN Convention on the Rights of the Child and the Supreme Court judgment in **ZH (Tanzania) (FC) (Appellant) v SSHD**, the best interests of the child will be a primary consideration (although not necessarily the only consideration) when making decisions affecting children, whether the child is the principle applicant or an adult applicant is the primary parent or guardian of a child in the UK or has genuine and subsisting family life with a child in the UK.

8.1 Children with British citizenship

Children with British citizenship have a right of abode in the UK and are not subject to immigration control. This right does not extend to their immediate family.

Those born in the UK before 1 January 1983 (apart from a few exceptions) automatically acquired British citizenship, regardless of their parent's immigration status at the time of birth. However, under the [British Nationality Act 1981](#) a person born in the UK on or after 1 January 1983 only acquired British citizenship at birth if, at the time of their birth, either parent is a British citizen or is settled in the UK.

'Settled in the UK' means free of immigration restrictions and ordinarily resident in the UK without being subject under the immigration laws to any restriction on the period for which they may remain and so can include persons either recognised as a refugee or beneficiary of HP who have been granted indefinite leave to enter or remain. A failed asylum seeker granted a period of Discretionary Leave is not settled for the purposes of the 1981 Act.

For children born before 1 July 2007, 'parent' does not include the father of an illegitimate child. For children born on or after 1 July 2007 a man can be regarded as the father even if he is not married to the mother. For a definition of the term "parent" see Annex F of the [Nationality Instructions](#).

A child born in the UK may have an entitlement to British citizenship if:

- ▶ either parent becomes a British citizen or settled in the UK before the child reaches the age of eighteen; or
- ▶ he or she lives in the UK for the first ten years of his or her life.

There is also the option to register a child under 18 as a British citizen at the Home Secretary's discretion. Caseworkers should refer to the [Nationality Instructions](#) for further guidance.

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8.2 Children without British Citizenship

Children born in the UK who are not British citizens are subject to immigration control. Such children require LTE when admission to the UK is sought and LTR when permission is sought for them to be allowed to stay in the UK. Section 73 of the NIA 2002 allows removal directions to be given to UK born children of illegal entrants. For further details on the paperwork to serve caseworkers should refer to the Enforcement instructions and guidance (EIG), [Chapter 50 – Persons liable to administrative removal under section 10](#).

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8.3 Including UK born dependants in asylum claims

UK born dependants who are not British citizens may be included as dependants in their parent's asylum claim - such an application constitutes an application for leave to remain. If they are refused leave as dependants, the decision does not attract any right of appeal.

They will not be considered for removal until and if the principle applicant on whom they are dependant has exhausted all avenues of appeal. If the parents are subject to administrative removal under section 10 of the [Immigration and Asylum Act 1999](#), removal directions may be served on the children under section 10(1)(c) of the 1999 Act.

It will normally be in the best interests of the child to accompany the parents, but submissions to the contrary must be carefully considered taking into account the need to safeguard and promote the welfare of children in accordance with the section 55 duty.

8.4 Granting leave in line to UK born dependants

Any request received by the Home Office for leave in line with a person granted leave following an initial decision on an asylum claim must be considered in line with the guidance below:

8.4.1 Children included in the initial claim before a decision is taken

Where the parent claiming asylum includes their UK born child in their asylum claim before a decision is taken on the initial claim, that child should be treated in the same way as any other dependant child.

8.4.2 Children not included in the initial claim or born to parents granted asylum or HP

Where no application has been made on behalf of a child born in the UK before a grant of leave, but **both** parents are granted asylum or HP, the caseworker should ask them to regularize the child's stay by applying for leave in line. Caseworkers must ensure that a copy of the full birth certificate is provided with any application for leave in line. If the parents do not do so, they should be warned that (although the child's presence in the UK is not unlawful) the child is not a British citizen, is subject to immigration control, and if seeking to re-enter the UK at a future date will require leave to enter in accordance with the immigration policies in force at that time.

Unless specifically requested by refugee parent(s), a child granted leave in line should not normally be recognised as a refugee since this status cannot be recognised without an individual assessment of the child's protection needs. If refugee status is requested, and both parents are refugees, the child may be recognised as a refugee without detailed enquiry unless the child is of a different nationality. This is not a charged application and no application form or fee is involved in this process.

Where **only one** parent is a refugee or has HP, the outcome will depend on whether the child's nationality is the same as that of the refugee parent. If the child is of a different nationality, individual consideration must be given to the application as if it were an asylum claim. See [section 8.4.4](#) below on 'UK-born children who apply for asylum'.

8.4.3 UK born children not included in the initial asylum claim or born in the UK to parents granted under Family or Private Life Rules or Discretionary Leave

Where no application has been made on behalf of a child born in the UK prior to a grant of leave, but the parents are granted leave to remain under the family or private life Rules or Discretionary Leave outside the Rules, the decision maker should ask them to regularise the child's stay by applying for leave in line.

If they do not do so, they should be informed that although the child's presence in the UK is not unlawful they are subject to immigration control because the child is not a British citizen. If the child leaves the UK and seeks to re-enter the UK at a future date they would require leave to enter in accordance with the immigration policies in force at that time.

Children born in the UK to parents granted leave other than refugee leave or HP can make a 'child born in the UK' application where at least one parent is settled. Parents must ensure that they include UK born children on any subsequent applications for leave. See [Home Office](#) website for the correct application process and forms.

8.4.4 UK born children who apply for asylum

There is nothing to prevent a UK born child, who is not a British citizen, claiming asylum in their own right and any such claim would need to be considered on its merits. Appeal rights will depend on the leave status of the child.

If the child has not previously been granted leave, the child will have no right of appeal against refusal of asylum. Refusal should be notified by letter. There will be no right of appeal against this decision unless the child is subject to enforcement action, either in accordance with section 3(5)(b) of the [Immigration Act 1971](#) (i.e. notified of an intention to deport as a family member of a person who is also subject to deportation action), or under section 10(1)(c) of the [Immigration and Asylum Act 1999](#) (i.e. removal directions as a family member of a person who is also subject to administrative removal).

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Section 9: Change Record

Version	Author(s)	Date	Change References
1.0	MO	28/02/2007	New web style implemented.
2.0	Asylum Policy	22/05/ 2014	Revised and updated instruction. Merged with 'Handling Swap Over Claims' asylum instruction.

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